MICHEAL TEO YU KENG & ORS v. MIRI CITY COUNCIL & ORS

HIGH COURT SABAH & SARAWAK, MIRI
MAIRIN IDANG JC
[JUDICIAL REVIEW NO: MYY-13NCVC-1-9-2014]
25 AUGUST 2015

ADMINISTRATIVE LAW: *Judicial review – Removal of car park – Decision of City Council to remove car park – Allegation that removal would severely affect applicants' business – Application for judicial review against decision of city council – Whether applicants had any proprietary rights over car park – Whether applicants suffered losses or damages arising from removal of car park – Whether there was invasion or threatened invasion of applicants' legal rights – Whether applicants' constitutional rights would be infringed*

LIMITATION: *Commencement of action – Judicial review – Decision of City Council to remove car park – Allegation that removal would severely affect applicants' business – Whether application for judicial review filed within time – When time starts to run – Whether 'when the grounds of application first arose' or 'when the decision is first communicated' – Whether announcement in newspapers admissible evidence – Rules of Court 2012 ('ROC'), O. 53 r. 3(6)*

The Mayor of Miri had announced that a car park ('the car park') along Jalan Sri Dagang was to be deleted or removed to pave way for the construction of an access road to Marina Park. The applicants claimed that the removal of the car park would severely affect their businesses. In this application for judicial review of the Mayor's decision, the applicants *inter alia*, sought leave for (i) a *certiorari* order to quash the decisions of the first to fourth respondents to unilaterally delete and remove the car park; and (ii) a mandatory order directing the first to fourth respondents to restore or continue to maintain the car park; and (iii) a declaration that the decision to unilaterally remove the car park was a breach of statutory duties and *ultra vires* the Local Authorities Ordinance 1996 (Cap 20) ('LAO'). At the substantive hearing of the present application, the respondents submitted that leave should not be given because the application was well out of time. Although the parties shared the view that there are two limbs under O. 53 r. 3(6) of the Rules of Court 2012 ('ROC'), the respondents relied on the first limb while the applicants replied on the second limb. Under the first limb, time starts to run 'when the grounds of application first arose' while the second limb provides that time starts to run 'when the decision is first communicated'. The applicants asserted that time started to run from the announcement by the Mayor of Miri in the newspapers that the car park was to be removed or deleted. To the applicants, the announcement was the decision first communicated to them. The respondents argued that the newspapers where the announcement was made was not admissible evidence and the second limb of O. 53 r. 3(6) of the ROC did not apply because such decision was not legally required to be communicated to a particular person. According to the respondents, time

commenced when the decision of the State Planning Authority ('SPA') approving the plans for the development of the Miri Waterfront Commercial Centre ('MWCC') was conveyed to the developer, Unique Harvest Sdn Bhd ('UHSB'), in 1994.

Held (dismissing application with costs):

(1) The newspaper reported a lot more than that was stated by the applicants about the decision of the first respondent to delete or remove the car park. The report showed that the SPA had approved the development of MWCC and MP way back in 1994 and 1995, respectively and that there was not to be a car park along Jalan Sri Dagang and the so-called car park there was only used temporarily. (para 45)

(2) The applicants' real basis of complaints should really be on the decision of the SPA in approving the development plans for MWCC and/or MP and not the announcement of the Mayor of Miri because what was announced by him on the car park was in compliance with the approval of the SPA. None of the applicants had challenged or sought to quash the planning/development approval and no relief was sought to quash or declare the planning/development given to the fifth respondent for the MP project including having Jalan Sri Dagang as an access road with no parking lots along the said road to the MP project. (para 46)

(3) The Mayor of Miri was not under any statutory requirement to communicate the decision to the applicants. There was no requirement to communicate on the deletion or removal of the said car park because there was never to be a car park in the first place. The applicants were aware of the presence of the fifth respondent's machineries along Jalan Sri Dagang which would indicate that works were going to commence to remove the car parks. The applicants should have filed their application three months from 14 April 2014 or from 2 May 2014. Having failed to do so, the applicants' application was therefore out of time. (paras 42 & 43)

(4) The SPA had the authoritative power over provisions of car park. The local authority also had power over car parks and parking spaces would be subject to s. 5 of the LAO. A decision on having car parks to allow car parking along Jalan Sri Dagang was the decision of the SPA based upon planning policy consideration. Matters of planning judgment are within the exclusive province of the local planning authority, which in Sarawak is the SPA. The planners, when deliberating on any planning proposal or proposal for development submitted to it, would always bear in mind what would be for the common good of the people of Miri. The need for road-widening had arisen and became necessary along Jalan Sri Dagang to ease the traffic jam within Miri. (paras 61, 62 & 63)

(5) The removal or deletion of the car park which was there on a temporary basis was done by the developer of MP and was carried out in pursuance of planning decisions made for the two developments, namely MWCC

and MP in the 1990s. The applicants' assertion, that the car park was permanent, could not be correct because such assertion would run contrary to the approved development plan and it would be illegal to have the said car park there. There was also no basis for the respondents to continue to maintain the car park. None of the applicants had any ownership or proprietary rights to any of the said car park. There was nothing in the sale and purchase agreement that said UHSB was to provide the applicants with car parks or that the car park along Jalan Sri Dagang would be constructed. (paras 64 & 67)

(6) The court has the jurisdiction to exercise judicial review over administrative decisions or decisions of inferior tribunal. However, before appropriate relief could be granted, it must be established that there was an invasion or threatened invasion of a legal right of the applicants. There was none in this application. It had not been shown that any of the constitutional rights of the applicants would be infringed should the car park be removed. Obviously the applicants would not be able to show such alleged infringement because the applicants did not own nor had any proprietary rights over the car park. (para 69)

(7) The applicants had not alleged or shown that they had or would suffer any loss or damage arising from the removal of the car park. No damage was claimed by the applicants in this judicial review even though they were entitled to do so if they had actually suffered or will suffer damage by reason of O. 53 r. 5 of the ROC. No remedy would be granted to a person against a public authority unless he can prove he had sustained particular and substantial damage beyond general inconvenience and injury to the public. (para 68)

Case(s) referred to:

Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor [2008] 6 CLJ 805 CA ***(refd)***

Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors [2008] 6 CLJ 473 CA ***(refd)***

Bains Harding (Malaysia) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd & Ors [1996] 1 BLJ 25 HC ***(refd)***

BU Developments Sdn Bhd v. Selangor Appeal Board & Ors [2014] 8 MLJ 539 ***(refd)***

Chong Sin Onn v. Kuching Municipal Council [1966] 1 LNS 37 HC ***(refd)***

Electrical Industry Workers Union v. Registrar of Trade Unions & Anor [1975] 1 LNS 34 FC ***(refd)***

Eng Lian Enterprise Sdn Bhd v. Pengarah Tanah & Galian Negeri Sembilan [2010] MLJU 85 ***(refd)***

Kanawagi Seperumaniam v. Dato' Abdul Hamid Mohamad [2004] 5 MLJ 495 ***(refd)***

Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor [2015] 3 CLJ 861 FC ***(refd)***

Lim Yew Sing v. Hummel International Sports & Leisure A/S [1996] 4 CLJ 784 CA ***(refd)***

Lori Malaysia Bhd v. Arab-Malaysian Finance Bhd [1999] 2 CLJ 997 FC ***(refd)***

Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65 FC ***(refd)***

Menteri Besar Negeri Pahang Darul Makmur v. Seruan Gemilang Makmur Sdn Bhd [2010] 5 CLJ 123 CA ***(refd)***
Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***
PP v. Dato' Seri Anwar Ibrahim (No 3) [1999] 2 CLJ 215 HC ***(refd)***
Reg v. Take-over Panel, Ex p Datafin Plc [1987] 1 All ER 564 ***(refd)***
Samont N Balakrishna v. George Fernandez [1969] 3 SCR 603 ***(refd)***
Simo Sekam & Ors v. Minister For Resource Planning & Ors [2014] 1 LNS 400 HC ***(refd)***
Sumita Development (M) Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Anor [2014] 9 CLJ 406 HC ***(refd)***
Telekom Malaysia Bhd v. Tribunal Tuntutan Pengguna & Anor [2007] 1 CLJ 300 HC ***(refd)***
Tesco Stores Ltd v. Secretary of State for Environment and Others [1995] 1 WLR 759 ***(refd)***
YAM Tunku Dato' Seri Nadzaruddin Ibni Tuanku Jaafar v. Datuk Bandar Kuala Lumpur & Anor [2005] 7 CLJ 41 HC ***(refd)***
Yeap Weng Hong & Anor v. Majlis Daerah Kuala Selangor [2014] 1 LNS 618 HC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 25(2)
Evidence Act 1950, s. 81
Land Code (Development & Subdivision of Land) (Parking Spaces) Rules 1998, rr. 8, 9
Land Code (Sarawak) (Cap 81), ss. 229(1)(d), 232(2)(b), 234(1)(b), 236(1)(e)
Local Authorities Ordinance (Sarawak) (Cap 20), ss. 5, 91(v), 119(i), 120, 121, 122(1), 123
National Parks and Nature Reserves Ordinance (Sarawak) (Cap 27), s. 10
Road Transport Act 1987, ss. 1(3), 67, 72, 73, 74
Rules of Court 2012, O. 41 r. 5, O. 53 rr. 3(2), (6), 5

For the plaintiff - Desmond Kho; M/s SN Voon & Assocs
For the 1st, 2nd, 3rd & 4th defendants - Mohd Adzrul; State Attorney General's Chambers
For the 5th defendant - Sim Hui Chuan (Lim Lip Sze with him); M/s Reddi & Co, Advocs

Reported by Najib Tamby

JUDGMENT

Mairin Idang JC:

Introduction

[1] It is common knowledge that Miri City celebrates its ten years anniversary this year. From a humble beginning Miri has become a vibrant city; thanks to the discovery of oil in 1882. In the 1930s Miri Town was then administered by the Lembaga Perbandaran Miri. In 1960 it was the Majlis Daerah. In 1981 it was the Majlis Perbandaran Miri. On 20 May 2005 Miri was declared a city and since then Miri has been administered by the Miri City Council (MCC).

[2] To be where Miri City now would require good planning, good administration and good governance. The then Lembaga Perbandaran Miri, Majlis Daerah Miri and Majlis Perbandaran Miri had all played important

roles in the early planning of Miri and so the same is expected of the MCC. Now the MCC's vision is: "The most liveable Resort City" and its mission: "We are committed to manage Council's resources efficiently and deliver world class services to the people". Thus MCC is expected to live to its vision and mission.

[3] Miri is now accessible by road from Bandar Seri Begawan, Brunei Darussalam and all major towns in Sarawak. It has become a shopping hub for people from Brunei Darussalam, as well as the neighbouring smaller towns like Bintulu and Limbang. Shopping complexes include the Bintang Plaza (now renamed "Bintang Megamall" or Parkson as most of the locals call it); Boulevard Shopping Complex, Imperial Shopping Mall, Servay Hypermarket, E-Mart, Miri Plaza, Wisma Pelita Mall, Merdeka Mall, MYY Mall (under construction) and so on. There are six major hotels in Miri City such as Meritz Hotel, Imperial Palace Hotel, Imperial Hotel, Mega Hotel Miri, Miri Marriot Resort & Spa, Park City Everly Hotel Miri, Dynasty Hotel and many small ones. There are also places of attractions such as Loagan Bunut National Park, Gunung Mulu National Park, Lambir Hills National Park, Grand Old Lady, Niah Cave National Park, Miri Sibuti Coral Reefs National Park, Luak Bay Esplanade, Miri Marina Park, Miri Crocodile Farm, Miri City Fan, Bungai Beach, Hawaii Beach, Brighton Beach Park, Peliau Beach and Taman Awam Miri.

[4] With good roads and the kind of attractions that Miri has to offer more motor vehicles are on the roads entering Miri City. In Miri it is said that there are 50,000 vehicles with 40,000 actually registered with the JPJ, Miri. It is also said that the increase in the number of accidents in Miri has been attributed to the rise in the number of vehicles (See Borneo Post Dec. 13, 2014). Traffic congestion in Miri City has also been getting from bad to worse especially during peak hours in the morning and evening on working days and even on weekends. The traffic congestion or traffic jam is expected as many vehicles converge to the city. There is a need to improve the roads system in the city so as to ease traffic jam. Motor vehicles also need to park somewhere. There is therefore a need to allocate car parks.

[5] There are many car parks along the roads within the Miri City. MCC and its predecessors have constructed and maintained certain areas as car parks after all these are part of the overall planning of Miri City. There is in fact a multi storey car park near Sri Dagang Road called Unique Harvests Car Park (the Unique Harvest Car Park) which was constructed by Unique Harvest Sdn Bhd (UHSB) the developer of the 40 units of shophouses completed in 1995 (the shophouses) on a parcel of land formerly known as Lot 901 Block Miri Concession Land District, a project known as the Miri Waterfront Commercial Centre (MWCC).

A **The Said Car Park**

[6] Now there was also a car park along Jalan Sri Dagang (the said car park) which was said to have been used by the applicants and their customers to park their cars. The applicants said they had been parking there for 18 years also.

B

[7] When it was announced that the said car park was to be deleted or removed to pave way for the construction of a double carriageway leading to Marina Bay (the said road) the applicants took issue on the intended deletion or removal of the same hence this judicial review (JR) application (the said application).

C

[8] The named applicants took up the said application for and on behalf of themselves and others being the registered proprietors, tenants, business owners and stakeholders. All say that they have an interest in the MWCC namely that the deletion and removal of the said car park would severely affect their businesses at the MWCC.

D

[9] The first applicant is the lead applicant in the said application. He had bought his shophouse unit namely Lot 1158, Block 9, Miri Concession Land District in 1996 (the said premises). Being a doctor practicing as obstetrician or gynaecologist he has set up a clinic and maternity home at ground floor and first floor of the said premises. As a Member of Parliament he maintains a community service on the second floor of the said premises. He said he is authorised to speak for the rest of the applicants. He had deposed to all the affidavits in support of the said application.

E

[10] The applicants have applied for the following reliefs:

F

(a) An order of *certiorari* to quash the decision of the Miri City Council, Pengarah Tanah Dan Survey, State Minister for Resource Planning and Environment and The State Government of Sarawak (hereinafter referred to as the first, second, third, and fourth respondents) by an announcement in the Borneo Post newspaper dated 24 August 2014 to unilaterally delete and remove car parks adjacent to and servicing the applicants' properties and or places of business at the Miri Waterfront Commercial Centre, Jalan Sri Dagang, Miri;

G

and/or alternatively for:

H

(b) A mandatory order directing the first, second, third and fourth respondents to restore the aforestated car parks and or continue to maintain the said car parks adjacent to and servicing the applicants' properties and/or place of business at the Miri Waterfront Commercial Centre, Jalan Sri Dagang, Miri;

I

(c) a declaration that the decision to unilaterally delete and remove car parks adjacent to and servicing the applicants' properties and or place of business at Miri Waterfront Commercial Center, Jalan Sri Dagang, Miri is a breach of statutory duties and *ultra vires* the Local Authorities Ordinance 1996 (Cap 20); and

(d) any further or other order this Honourable Court may deem fit and just.

The Leave Application

[11] On the 2 October 2014 at the hearing of the leave application I heard Mr See Chee How (Mr See) and Mr Desmond Kho (Mr Kho) learned counsel for the applicants. Mr Sim Hui Chuan (Mr Sim) learned counsel for Pantai Bayu Indah Sdn Bhd (PBISB) the fifth respondent, the developer for the Marina Park (MP). It is trite law that the respondents have no right of appearance but the court may invite the putative respondent(s) to seek their views on specific legal issue or assist the court in coming to a decision whether to grant leave (see *Kanawagi Seperumaniam v. Dato' Abdul Hamid Mohamad* [2004] 5 MLJ 495).

[12] At the leave application I only had the benefit of reading the cause papers and the applicants' written submission. Since Mr Sim was present I invited him to address me on whether the application is out of time.

[13] The applicants submitted their application arose as a result of the announcement of the Mayor of MCC (Miri Mayor) which was reported in the Borneo Post and Sin Chew Daily News (the said newspapers) dated 24 August 2014 and 23 August 2014 respectively that the said car park was to be deleted and removed as the fifth respondent "would start the works next week without any objections, as the project and the engineering plan is following the letter of the law".

[14] The applicants also submitted that the leave application was made on 17 September 2014 whilst the decision of the first respondent to delete or remove the said car park was communicated to the applicants through the Miri Mayor's announcement in the said newspapers on the 24 August 2014 and 23 August 2014, as such the said application was made within the three months required under the law.

[15] Mr Sim however orally submitted that the said application was well out of time. He had referred to exh. DT3 to the first applicant's affidavit (encl. 5) which was the letter dated 14 April 2014 written by the applicants to the first respondent about the taking away of the said car park. It was his submission that the three months period had expired on 14 July 2014.

[16] At the request of both counsel to submit further submissions which I granted, I then adjourned my ruling in respect of the leave application to the 10 October 2014. The applicants then filed their further submission but the fifth respondent had not. The applicants asserted that the leave application

was filed within the three months from the Miri Mayor's announcement in the said newspaper. On the 10 October 2014 I granted leave to issue the JR (the application). I then fixed on the 6 November 2014 for the substantive argument in respect of the application. I gave directions that parties were to file their written submissions.

[17] On 26 May 2015 I dismissed the application and awarded costs of RM15,000 to the first, second, third & fourth respondents and RM15,000 to the fifth respondent. Herein are the grounds of my judgment.

[18] At the substantive hearing of the application the respondents gave further submissions that leave should not have been given. The respondents felt very strong on this issue because it was their view that the application was well out of time. I think it was only fair that I should allow the respondents to raise their preliminary objections on the applicants' application after all the first to fourth respondents were not present in court at the leave application as they were yet to be served with the cause papers and the hearing being *ex parte*. Now I am guided by the decision in *Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor* [2015] 3 CLJ 861 wherein the Federal Court held:

> (5) At the leave stage, the application was made by the appellant *ex parte*. Both the first and second respondents were not present in court as they were not served yet with all the relevant documents. Obviously, the respondents could not be expected to raise any preliminary objection at the leave stage. Therefore, the question as to whether the respondents were barred and estopped from raising such preliminary objections after leave had been granted did not arise. The first appearance by both the respondents in the application was when the application proper was heard *inter partes*. That was the first and earliest opportunity for them to appear and to raise the preliminary objections. There was nothing irregular about that.

[19] Datuk JC Fong who then appeared for the first to fourth respondents submitted that (i) the grounds for making this judicial review first arose and, (ii) the decision of the State Planning Committee (SPA), not to have car parks in the middle of the said road and (iii) the communication of that decision to the developer – company from whom the applicants bought their shophouses, occurred more than 90 days prior to the filing of the application for leave to apply for judicial review.

[20] The applicants asserted that time starts to run from the announcement by the Miri Mayor in the said newspapers that the car parks was to be removed or deleted to pave way for the construction of an access road to MP. To the applicants that announcement in the said newspapers was the decision first communicated to them.

[21] There was clearly a dispute between the parties on when time starts to run. Learned counsels for the respective parties were of the view that there are two limbs to O. 53 r. 3(6). They had also reminded me that compliance

with the time frame prescribed by the rules is fundamental as it goes to jurisdiction (see *Menteri Besar Negeri Pahang Darul Makmur v. Seruan Gemilang Makmur Sdn Bhd* [2010] 5 CLJ 123; [2010] 5 AMR 220).

[22] Now O. 53 r. 3(6) Rules of Court 2012 says time begins to run from the date when the grounds of application first arose or when the decision is first communicated to the aggrieved person. It is therefore crucial to first identify definitely which of the two limbs the applicants are relying. Is it when the grounds of application first arose or when the decision is first communicated. But there has to be actual date (see *Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor* [2008] 6 CLJ 805; [2008] 6 MLJ 704, Court of Appeal; *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65).

When Time Starts To Run

[23] From their respective submissions the applicants had relied on the second limb "when the decision is first communicated". The respondents however said it should be the first limb "when the grounds of application first arose".

[24] From my analysis of the submissions of both the applicants and the respondents there appeared to be three situations when time starts to run: (i) the decision of the first respondent to delete or remove the said car park communicated to the applicants through the Miri Mayor *vide* the newspapers on the 24 August 2014, (ii) when the applicants wrote exh. DT3 dated 14 April 2014 to the Miri Mayor or (iii) when the decision of the State Planning Committee (now SPA) approving the plans for the development of the MWCC project conveyed to UHSB *vide* exh. LJ5 dated 19 August 1994. Let us now discuss these three situations.

(i) The Decision Of The First Respondent To Delete Or Remove The Car Parks Communicated To The Applicants Through The Miri Mayor Vide The Newspapers On The 24 August 2014

[25] Learned counsel for the applicants submitted that in the computation of time under O. 53 r. 3(6) the court shall have regard to the surrounding circumstances relying on *Eng Lian Enterprise Sdn Bhd v. Pengarah Tanah & Galian Negeri Sembilan* [2010] MLJU 85.

[26] The applicants contended that there was no first communication of the first to fourth respondents' decision of the deletion or removal of the said car park until the announcement of the Miri Mayor in the newspapers on the 24 August 2014. To the applicants that announcement by the Miri Mayor published in the newspapers was the first communication of the impugned decision to them. It was their submission that the spirit and letter of O. 53 provides that time only starts to run when a decision is communicated. The applicants had relied on my decision on the second limb of O. 53 r. 3(6) in *Simo Sekam & Ors v. Minister For Resource Planning & Ors* [2014] 1 LNS 400.

[27] The applicants' submitted that in so far as their reliance on the newspapers as evidence of the impugned decision, the court had allowed newspaper evidence in the following circumstances: (a) interlocutory proceedings (*Lim Yew Sing v. Hummel International Sports & Leisure A/S* [1996] 4 CLJ 784; [1996] 3 MLJ 7) where it satisfies the requirements of s. 81 Evidence Act 1950; (b) where its contents have been verified by the reporter who reported on the event or (c) the maker of the statement give evidence (*PP v. Dato' Seri Anwar Ibrahim (No 3)* [1999] 2 CLJ 215; [1999] 2 MLJ 1 or (d) when there are other forcible evidence to prove its contents: *Samont N Balakrishna v. George Fernandez* [1969] 3 SCR 603. Learned counsel for the applicants contended that situation (d) applied to the applicants since "… there exist such other evidence that are forcible as evidence of the first to fourth respondents was focused largely on defending or justifying what was stated by the Miri Mayor in the newspapers, namely that the project and the engineering plan was following the letter of the law".

[28] Datuk JC Fong, learned counsel for the first to fourth respondents submitted that the applicants had not furnished documentary evidence of the alleged 'decision' to delete or remove the disputed car park and who had made such decision. He contended that the applicants must specify the impugned decision that was sought to be reviewed (See *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65; *Sumita Development (M) Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Anor* [2014] 9 CLJ 406).

[29] Datuk JC Fong also submitted that the newspapers (DT12) wherein the Miri Mayor had purportedly announced the deletion or removal of the said car park is not admissible evidence of any decision made in August 2014 (See *YAM Tunku Dato' Seri Nadzaruddin Ibni Tuanku Jaafar v. Datuk Bandar Kuala Lumpur & Anor* [2005] 7 CLJ 41).

[30] Mr Sim, learned counsel for the fifth respondent submitted that the second limb of O. 53 r. 3(6) "when the decision is first communicated" did not apply because such decision was not legally required to be communicated to a particular person. He contended that in *Simo Sekam*, *supra* there was a statutory provision requiring such notice to be communicated to the applicants there.

[31] Mr Sim also submitted: "It is important to note that the applicants have failed to disclose to this court that in the *Eng Lian Enterprise's* case which was referred to by the applicants, Dato' Haji Ahmad Nafsy bin Yasin JC had said: 'The learned Senior Federal Counsel further submitted that although O. 53 r. 3 sub-r. 6 empowers the court to extend time, any such extension can only be granted upon the application of the applicant and provided that is good reasons for the delay'. Mr Sim went on to submit: "Similarly, in the present case, there is also no application for extension of time. The applicants' application for judicial review is out of time. The applicants'

clever attempt to shift the court focus to the surrounding circumstances is but an attempt to pull wool over the court's eyes over the clear lack of jurisdiction for the application".

(ii) When The Applicants Wrote exh. Dt3 Dated 14 April 2014 To The Miri Mayor

[32] It is the respondents' contention that the applicants had known about the deletion or removal of the said car park in early April 2014 as the applicants had written to the Miri Mayor *vide* their letter dated 14 April 2014 (DT-3 annexed to the affidavit in support) which was also stated in para. 12 of the applicants' statutory statement (encl. 2) which read "Sometime in early April 2014, in my capacity as the Member of Parliament for Miri, I have received some complaints that Pantai Bayu Indah Sdn Bhd (the fifth respondent), the developer of Marina Park City had drawn up plans to enlarge and broaden the existing road of Jalan Sri Dagang that is connecting to their development site of Marina Park City. They have in the process broken up and obliterated a roundabout and open spaces and deleted and or removed numerous car parks and car parking spaces along Jalan Sri Dagang which are servicing the proprietors tenant occupiers and business operators, their guests and visitors to the shophouses at and in the vicinity of that part of Block 9, Miri Concession Land District within the Miri Waterfront Commercial Center".

[33] The respondents therefore contended that the date when the grounds of application first arose would be in early April 2014 or specifically on the 14 April 2014 when the applicants wrote DT3 since at that time the applicants by whatever means had known or would have known of the removal or deletion of the said car park. The respondents had referred to the case of *Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor* [2008] 6 CLJ 805 CA.

[34] The applicants however had this to say: "It is humbly submitted that this is not the proper date as there was no circumstances where the grounds first arose or where the decision was first communicated." It was their submission that the date sometime in early April 2014 or 14 April 2014 or the actions of the fifth respondent in deleting and or removing numerous car parks and car parking spaces along Jalan Sri Dagang could not have been the relevant date as at that time there was no information or facts known about the decision of the first to fourth respondents. The applicants also submitted: "Even if at the point where the letter was written, it could be said that the grounds for judicial review first arose, there was certainly no decision of the first to fourth respondents that was first communicated to the applicants". The applicants therefore asserted that the second limb of O. 53 r. 3(6) applied to the applicants.

(iii) When The Decision Of The State Planning Committee (Now SPA) Approving The Plans For The Development Of The MWCC Project Was Conveyed To UHSB Vide Exh. LJ5 Dated 19 August 1994

[35] Datuk JC Fong submitted that in terms of O. 53 r. 3(6) when the decision of the State Planning Committee (now known as SPA) approving the plans for the development of the MWCC project was conveyed to UHSB *vide* exh. LJ5 dated 19 August 1994, the applicants as the purchasers or occupiers of shophouses in the MWCC which was built by UHSB must be bound by that decision. Datuk JC Fong asserted that the communication of that decision to UHSB in 1994 occurred more than 90 days prior to the filing of the application for leave to apply for JR.

[36] Mr Sim also submitted that communication of a decision only arose if there was a legal requirement for communication to the applicants. He contended that an application for planning approval and the decision thereafter was a matter between those applying for planning approval and the SPA. He submitted that in the present case the fifth respondent had applied for planning approval for the development of MP which was approved by the SPA in November 1999 which involved the upgrading of Jalan Sri Dagang into dual carriageway and which decision was communicated to the fifth respondent. Mr Sim contended that there was no statutory requirement to communicate such planning approval to the applicants therefore the second limb of O. 53 r. 3(6) did not apply to the applicants.

[37] Learned counsel for the applicants submitted that exh. LJ5 was the plan for MWCC which was approved by the SPA on 31 April 2014 (I think the correct date is 31 April 1994) and conveyed by the Director of Land and Survey to Kumpulan Design, the architect for UHSB, the developer for the project. Learned counsel for the applicants however questioned the authenticity of LJ5 dated 19 August 1994, as the material date to calculate the time. They say that there is no authority to support the respondents' contention that the applicants were bound by the terms of LJ5 just because they had purchased the shophouses from UHSB. Learned counsel for the applicants therefore asserted that on the pleaded dates, namely early April 2014, 14 April 2014, 12 May 2014, 15 May 2014, 4 July 2014, end of June 2014, 23 June 2014, 11 July 2014, 14 July 2014, 15 July 2014 and 23 July 2014 there was no first communication of the decision of first to fourth respondents until the announcement by the Miri Mayor in the newspapers. The applicants again referred to *Simo Anak Sekam & Ors*, *supra* on the meaning and requirement of communication of the decision.

The Impugned Decision

[38] What then is the impugned decision here for the purpose of the JR application and when does time begin to run. Which one of the three situations is the decision for the purpose of commencing the application for JR.

[39] The respondents had referred to me the case of *Abdul Rahman Abdullah Munir & Ors*, *supra* wherein the Court of Appeal had held: A

> [61]. It is thus crucial to first identify definitely what the decision is that is sought to be impugned. This has to be the actual date. (see *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65). The appellants' interpretation towards the first respondent's non-response to their letter makes no sense and far stretching one's imagination. This would give rise to an artificial meaning to the word "decision". The date of the decision too becomes fictitious which makes the computation of the statutory time limit under O. 53 RHC indeterminable. B C

[40] There is no dispute that the applicants are relying on the second limb of O. 53 r. 3(6). To them there had to be first communication of the decision. To them the announcement of the Miri Mayor published in the newspapers on the 24 August 2014 was the first communication of the decision to delete or remove the said car park. They put strong reliance on my decision in *Simo Sekam*, *supra*. D

[41] But let me quickly say that in *Simo Sekam,* my decision was in the context of a statutory requirement to communicate a decision to the natives under s. 10 of the National Parks and Nature Reserves Ordinance which states as follows: E

> 10. (1)Where it is proposed to constitute a national park or a nature reserve over State land which is not within a forest reserve or a Wild Life Sanctuary, the Minister shall publish in the *Gazette* a notification:
>
> (a) Specifying as accurate as possible the description and limits of the land intended to be constituted as a national park or a nature reserve; F
>
> (b) Directing any person claiming any rights or privileges in or over such land to submit, within sixty days from the date of publication of such notification, to the Chief Park Warden for the area in which the land is situated, his claim with evidence in support thereof; and G
>
> (c) Stating that upon the expiry of a period of sixty days from the date of publication of the notification, no claim to any rights or privileges in or over the area intended to be constituted a national park or nature reserve shall be entertained and such rights or privileges, if any, shall be deemed to have been abandoned or the exercise thereof has been waived, by any person entitled thereto. H
>
> (2) A copy of the notification shall be published in at least one newspaper circulating in Sarawak and displayed at the District Office for the area to be constituted a national park or nature reserve or be brought to the notice of the persons affected thereby in such a manner as the Minister thinks necessary. I

[42] Clearly in *Simo Sekam supra* there was a mandatory requirement under s. 10 of the National Parks and Nature Reserves Ordinance to communicate the decision. In the present case the Miri Mayor is not under any statutory

requirement to communicate the impugned decision to the applicants. There was also no requirement to communicate on the deletion or removal of the said car park because there was never to be a car park there in the first place. The said car park to be there was not a condition of the approval of the development plan that was approved by SPA for the development of MWCC. The case of *Simo Sekam*, is of no help to the applicants.

[43] Now the respondents submitted the applicants knew or would have known of the impugned decision to delete or remove the said car park on the 14 April 2014 when they wrote to the Miri Mayor (see DT3) or on the 12 May 2014 when they wrote to the State Planning Unit (see DT5). Having read "DT3" and "DT5" I agree with the respondents' contention on this point. I may also add the applicants were also aware of the presence of the fifth respondent's machineries along Jalan Sri Dagang which would indicate that works was going to commence to remove the said car parks. The applicants should have then filed their application three months from 14 April 2014 or from 12 May 2014. The applicants having failed to do so; the application is therefore out of time.

[44] But Datuk JC Fong had submitted that the decision to delete or remove the said car park must be viewed in the context of the decision of the SPA approving the plans for the development of the MWCC project which was conveyed to UHSB on the 19 August 1994. He had brought to my attention the announcement by the Miri Mayor that was published in the newspaper which said: "The current implementation of Marina Park City Development is being executed according to the project masterplan's specification approved by the State Planning Authority (SPA)", "Miri Mayor Lawrence Lai said the effort in scrapping a total of 44 parking lots in the median road is as stipulated in the original plan", "SPA has approved a dual carriageway for the implementation of the Marina development in 1995", "However, in 1998, the Miri City Council (MCC) and the Lands & Survey Department during a traffic committee meeting agreed to use the space of the median road TEMPORARILY for public car parking purpose", "Lai said the decision was made following a public request to have more parking lots in the area", "During that time, the volume of traffic was not heavy and the effort to turn the area for a dual carriageway had yet to commence", "Thus, the Council and the L&S Department agreed to use the space temporarily for the Council's car parking purpose".

[45] I am concern that the newspaper had reported a lot more than that was stated by the applicants about the decision of the first respondent to delete or remove the said car park. The report in the newspaper in fact showed that the SPA had approved the development of MWCC and MP way back in the 1994 and 1995 respectively and that there was not to be a car park along Jalan Sri Dagang and the so called car park that was there was used only temporarily.

[46] Surely there is no intention on the part of the applicants to ignore the approval that was given by the SPA to the developers of both MWCC and MP in the 1990s. From my analysis of the facts of this case the applicants' real basis of complaints should really be on the decision of the SPA in approving the development plans for MWCC and/or MP and not the announcement of the Miri Mayor because what was announced by him on the said car park was in compliance with the approval of the SPA. Datuk JC Fong submitted that none of the applicants had challenged or sought to quash the planning/development approval (including the use of Jalan Sri Dagang as an access to the Marina Park) and no relief is sought to quash or declare the planning/development approval given to the fifth respondent for the MP project including having Jalan Sri Dagang as an access road with no parking lots along the said road to the MP project.

[47] I agree with Datuk JC Fong that the applicants should have challenged the SPA's approval given in the 1990s which I called the "substantive decision" that was conveyed to the developers of MWCC and MP in the 1990s and not the Miri Mayor's announcement which I called the "ancillary or consequential decision" to remove the temporary car park. It is my view that the validity of that SPA's decision could not found a challenge to the decision which was announced by the Miri Mayor. In the premises it is my view that the applicants' application herein was clearly out of time.

The Substantive Application

[48] The applicants' application here is to quash the impugned decision of the Miri Mayor by way of *certiorari*. I think I should first state here that the principles governing the issue of *certiorari* in the exercise of the powers of judicial review of administrative action are well summarised in the case of *Telekom Malaysia Bhd v. Tribunal Tuntutan Pengguna & Anor* [2007] 1 CLJ 300 where Low Hop Bing J (as he then was) held:

> Governing Principles
>
> [12] At this juncture, it is appropriate for me to set out the principles governing the grounds for sustaining a substantive notice of motion to challenge a decision-making process by way of *certiorari*, as follows:
>
> (1) It is neither an appeal nor a review of the decision itself, but a review of the decision-making process of the tribunal to see if there are errors of law on the face of the record;
>
> (2) It is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law, for the categories of such an error are not closed;
>
> And an error may be disclosed if the decision-maker eg,:
>
> (a) asks himself the wrong question;
>
> (b) takes into account irrelevant considerations;
>
> (c) omits to take into account certain relevant considerations (an Anisminic error);

A (d) misconstrues the terms of the relevant statute; or

(e) misapplies or misstates a principle of general law.

(per Gopal Sri Ram JCA in *Syarikat Kenderaan Melayu 15 Kelantan Bhd. v. Transport Workers Union* [1995] 2 CLJ 748 at p 765 f-g CA);

B (3) In process or substance, an impugned decision is flawed on ground of:

(a) Illegality, meaning that the decision must be based on law and the decision-maker must understand directly the law that regulates his decision-making power and must give effect to it, and whether he has or not is par excellence a justiciable C question;

(b) irrationality meaning "*Wednesbury* unreasonableness", so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it, as D enunciated in *Associated Provincial Picture Houses Ltd v. Wednesbury Corp* [1948] 1 KB 223;

(c) Procedural impropriety covering failure:

(i) To observe basic rules of natural justice;

E (ii) To act with procedural fairness;

(iii) To observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice; and

F (4) Possibly, proportionality.

(per Edgar Joseph Jr. FCJ in *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 at pp 172b - 173b; referring to the judgment of Lord Diplock in *Council of Civil Service Unions & Ors v. Minister for the Civil Service* [1985] AC 374). (See my judgment in *Lim Siew Hong* G *v. Contraves Advances Devices Sdn Bhd & Anor* [2006] 8 CLJ 274; [2006] 2 AMR 770 at pp 773-775).

[49] There is no dispute that both learned counsel for the applicants and respondents are in agreement on the principal grounds upon which a court may review a decision of an inferior tribunal or statutory authority. H Mr Voon had referred to *BU Developments Sdn Bhd v. Selangor Appeal Board & Ors* [2014] 8 MLJ 539. Datuk JC Fong had referred to the case of *Yeap Weng Hong & Anor v. Majlis Daerah Kuala Selangor* [2014] 1 LNS 618. It was also the respondents' submission that the court's role is to review decisions of government departments and not to act as appellate tribunal (see *Pangarah* I *Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143; [1979] 1 MLJ 135 quoting Raja Azlan Shah Ag CJ (Malaya) (as he then was) at p. 149; *Electrical Industry Workers Union v. Registrar of Trade*

Unions & Anor [1975] 1 LNS 34; [1976] 1 MLJ 177). Mr Sim had also referred to the case of *Reg v. Take-over Panel, Ex p Datafin Plc* [1987] 1 All ER 564 which was cited by the applicants.

[50] Now from my reading of the cause papers, namely the statutory statement I agree with Datuk JC Fong that the applicants had anchored their application on the following grounds and I can do no better than to adopt the grounds listed by him:

(i) sometime in early April 2014 the first respondent in his capacity as Member of Parliament, received complaints that the fifth respondent was in the "process of enlarging the existing Jalan Sri Dagang" and have in the process "broken up and obliterated a roundabout and open spaces and deleted and or removed many car parks and car parking spaces" which are serving proprietors and occupiers and operators of businesses along the said road (see para. 12 of statutory statement);

(ii) the deletion and removal of the said car parks had "deeply angered" the residents at Miri Waterfront Commercial Centre as there had been no consultation whatsoever from either of the respondents" (see para. 14 of the statutory statement);

(iii) there was no need to widen the existing access road and delete and remove the existing car parks (on the Jalan Sri Dagang) and "in addition the other four double carriageways servicing the fifth respondent's development are already adequate to provide traffic flow to their development (see para. 16 statutory statement);

(iv) the car parks of the Miri Waterfront Commercial Centre had already been gazetted in 1996 as under the control of the first respondent/MCC and there had been no extinguishment order (see para. 17 of statutory statement);

(v) the first respondent has the statutory duty and responsibility to manage and control car parks and parking spaces to the extent of satisfying the legal requirements and governing guidelines as all land in open spaces are surrendered to the fifth respondent and the said land so surrendered shall be state land vested in the first respondent/City Council (see para 27.4 of statutory statement); and

(vi) the applicants have legitimate expectation that the respondents continue to maintain the said car parks adjacent or servicing the applicants' property and or place of business at Miri Waterfront Commercial Centre (see para 31.7 of statutory statement).

[51] In the main of the applicants' allegation is that the manner of the deletion and removal of the said car park was not done in accordance with the law and was therefore illegal, unreasonable, oppressive and prejudicial to the applicants and constitutes a breach of natural justice.

[52] Let me also state here that I agree with the respondents that it is the SPA that approves the development plans and as the approving authority it derives its power under ss. 229(1)(d), 232(2)(b), 234(i)(b) and 236(1)(e) of the Land Code. Let me reproduce them hereunder:

> Functions of the State Planning Authority
>
> 229.(1) The functions of the State Planning Authority shall be:
>
> (a) ...
>
> (b) ...
>
> (c) ...
>
> (d) to formulate policies and guidelines for and to give directions to local authorities with regard to the use and development of land within their respective areas of jurisdiction, including, but not limited to, the improvement of the physical environment, the management of traffic or communications systems, and the provision of waste and sewage systems;
>
> 232(1) ...
>
> (2) Where the state Planning Authority decides to approve the sub-division or development of the said land, it may require an amended plan to be submitted and impose any or all of the following conditions or requirements, namely:
>
> (a) ...
>
> (b) to make provisions for car parks or car parking spaces on the land or on an alternative site or place to be provided by the State Planning Authority;
>
> (c) ...
>
> (d) such other requirements as the State Planning Authority may impose in the interest of overall planning for the area where the land is situated.
>
> Procedure following approval of plan
>
> 234 (1)(a) ...
>
> (b) The state Planning Authority may, on application by the person who submitted the plan, revise or modify the approved plan on such terms and conditions as the Authority may deem fit and upon payment of the prescribed fees. The plan so revised or modified shall be the approved plan for the purposes of this Part.
>
> Compensation in respect of approved sub-division
>
> 236(1) Whenever under section 232(1) the State Planning Authority requires the proprietor to make provision for the construction of roads, the making of reserves or the completion to the satisfaction of the Superintendent of the work of making roads and reserves, or the

provision of car parking spaces on the land or on such alternative site or place as may be approved by the State Planning Authority, the following provisions shall have effect:

(a) ...

(b) ...

(c) ...

(d) ...

(e) The number of car parking spaces to be provided shall be determined having regard to the usage of the land or the building intended to be built thereon or, alternatively, the State Planning Authority may accept such amount as may be fixed by rules made under section 248 as payment *in lieu* of the provision of each car parking space required.

[53] As submitted by Datuk JC Fong, the court in considering the grounds advanced by the applicants should, *inter alia* take into account that there were already approved development plans issued by the SPA for the development of MWCC and MP respectively; that such approvals showed there would be no car park in or along or in the middle of Jalan Sri Dagang; that UHSB (the developer) was required to build a multi storey car park (see LJ4 and LJ5 to the affidavit in reply of Laping ak Jawa); that the layout plan attached to the sale and purchase agreement (see DT1 of the first applicant's affidavit) did not show there would be parking lots in the middle of or on the said Jalan Sri Dagang; that the land which now forms Jalan Sri Dagang where the said car parks was surrendered by the UHSB to the Government for use as public road (see para. 25 of affidavit of Laping ak Jawa); that the said car parks were meant to be temporary and gazetted as temporary car parks and that none of the applicants are claiming ownership or proprietary rights to any of the said car parks.

[54] On reading the respective affidavits and submissions of the applicants and the respondents it is not disputed that the development of MWCC had been completed and the development of MP is ongoing. I also think that the parties herein understood and are in agreement that in any intended proposal to develop lands, the developer and/or the registered owner of the said lands would have to first submit development plans to the SPA for its consideration and approval. In most cases the developer would retain the service of a firm of consultants who are expert and knowledgeable on the SPA's requirements when submitting the said development plans and the accompanying planning briefs. The SPA would then study such development plans and then issue the approval for the said development subject to terms and conditions which the developer must strictly complied.

[55] But the applicants have also submitted that the local authority has jurisdiction over the said car park. To the applicants the issue here is the said car park. They had referred to me the Road Transport Act 1987 (the RTA), Local Authorities Ordinance 1996 (the LAO) and the Land Code (Development & Subdivision of Land) (Parking Spaces) Rules 1998.

[56] The applicants submitted that the RTA applies through Malaysia (s. 1(3)); that the first respondent is defined as a local authority (s. 67) and that the first respondent is responsible to make provision for car parks and parking spaces (ss. 72-74). It is also their submission that under ss. 119-123 of the Local Authorities Ordinance 1996 (the LAO) the local authority is given the powers over public roads and car parks within its local authority area. The applicants also submitted that under the LAO, the local authority shall designate places for parking of vehicles (s. 119(i)); that the local authority shall have overall control of any public car park situated within its jurisdiction (s. 121) and that s. 122(1) stated that all public car parks shall be operated, managed and maintained in accordance with bylaws made by the local authority pursuant to s. 91(v). The applicants also submitted that the said car park servicing the applicants had reverted to the control of the first respondent under the Land Code (Development & Subdivision of Land) (Parking Spaces) Rules 1998 namely under rr. 8 and 9 respectively.

[57] It is the applicants' submission that in view of the provisions of the RTA and the LAO, the first respondent therefore had the statutory duty and responsibility to manage and control the car parks and car parking spaces including making provisions to create car parks. It is also their submission that the said car park and other car parking spaces are permanent to serve the proprietors, tenants, business operators of the shophouses and the guest, visitors and customers of the MWCC. They therefore submitted that the first respondent was in breach of its statutory duty in unilaterally deleting and removing the said car park.

[58] Can the court agree with the applicants' contention that those provisions of law referred to by them would entitle them to have the said car park permanently there along Jalan Sri Dagang?

[59] I have read those provisions in the Land Code pertaining to the power of SPA as well as those provisions under the RTA, LAO and the Land Code (Development & Subdivision of Land) (Parking Spaces) Rules 1998 referred to me by the respective learned counsel. It is my finding that the SPA had the authority over provisions of car park. I also think that the local authority power over car parks and parking spaces would be subject to s. 5 of LAO which states:

> A local authority shall have and shall exercise only such powers within its area of jurisdiction as may be expressly conferred by this Ordinance and **under any other written laws,** and the exercise thereof shall be subject to the provisions of, and the restrictions contained in this Ordinance or such other written laws. (emphasis added)

[60] To me the provision of car park and parking space and where they are to be placed in the development plan must first be approved by the SPA. In the instant case the SPA had already given the approval for the development of MWCC and MP which the respective developers (UHSB and PBISB) must comply with such as the provisions for roads, car park and parking space. But in the case of MWCC the approved development plan would be that there should not be car parks along Jalan Sri Dagang.

[61] I agree with the submission of Datuk JC Fong that a decision on having car parks or to allow car parking along Jalan Sri Dagang was the decision of the SPA based upon planning policy consideration which was explained in the affidavits of Laping anak Jawa and corroborated by the affidavits of Dato Sri John Lau and the joint affidavit of Chai Long Seng and Wong Ngie Tung affirmed on 13 November 2014.

[62] I have to also agree with the respondents that matters of planning judgment are within the exclusive province of the local planning authority which in Sarawak is the SPA. We might not notice it at first, but the location of all the buildings, roads, car parks etc around Miri took planning. Planners make sure cities are built in a smart way, so that the roads can fit all of the traffic the buildings create, that there are car parks and that neighbourhoods still have parks and playgrounds, that there are places for trees and wildlife etc. It therefore falls upon the shoulders of the planners to plan properly not only for today but for the future.

[63] I also think that the planners when deliberating on any planning proposal or proposal for development submitted to it would always bear in mind what would be for the "common good" of the people of Miri. I think way back in 1994 or 1995 when approving the development plan for MWCC and MP the SPA had considered this "common good" that there should not be this car park along the Jalan Sri Dagang but that the land there should be for road reserve for future use. I think the planners in 1994 had the foresight that there would be an increase in traffic in the years to come. Now the need for road widening has arisen and become necessary along Jalan Sri Dagang to ease the traffic jam within the City of Miri. So there you are the planners know what is good for Miri City yesterday, today and tomorrow and as I have determined in Sarawak it is the SPA that is empowered to do so under ss. 229(1)(d), 232(2)(b), 234(1)(b) and 236(1)(e) of the Land Code.

[64] Now having considered what I have discussed above, was the decision to delete or removal of the said car parks an act which is illegal, irrational or improper as alleged by the applicants. I think not. The removal or deletion of the said car park which were there on a temporary basis was done by the developer of MP and was carried out in pursuance of planning decisions made for the two developments namely MWCC and MP in the 1990s. The applicants' assertion that the said car park was permanent cannot be correct because such assertion would run contrary to the approved development plan

and it would be illegal to have the said car park there. However such an action to delete and remove the said car park could not be illegal as the planning decisions are still in force and have not been rescinded or varied.

[65] Before I move on I would like to say it is trite law that in JR proceedings the affidavit should verify the facts relied on which may contain such facts as the deponent was able of his own knowledge to prove (see O. 53 r. 3(2) and O. 41 r. 5 respectively). In the supplementary affidavit affirmed by the first applicant, he said "I verily believe that these car parks and car parking spaces were permanent." The first applicant had not stated the sources or grounds of his belief, the court can therefore presume that the first applicant had no grounds but only suspicion (see *Bains Harding (Malaysia) Sdn Bhd v. Arab-Malaysian Merchant Bank Berhad & 3 Ors* [1996] 1 BLJ 25; [1996] 1 MLJ 425. Such affidavit is therefore irregular and inadmissible in evidence (see *Lori Malaysia Bhd v. Arab-Malaysian Finance Bhd* [1999] 2 CLJ 997; [1999] 3 MLJ 81).

[66] But the applicants also submitted that they have not been properly heard on their objection to the deletion or removal of the said car park. I think informing members of the public on the deletion or removal of the said temporary car park is required as a matter of good governance so that members of the public would know that they could no longer park their cars there. But I must say at once that the right to be heard does not necessarily meant the right to a public hearing for the applicants to register their opposition when the first respondent is not statutory required to call for such public objections. From the first applicant's affidavit, he being a well-educated person and a Member of Parliament knew exactly what he needed to do. Indeed he would have gone to the office of the first respondent to make some inquires about the machineries that were sent by the fifth respondent to Jalan Sri Dagang. He would have obtained or made copies of documents pertaining to the development of MWCC and MP. He had also written to the respondents. There was in fact a reply from the third respondent. He even submitted petition to the first respondent. Certainly in his quest to investigate further on the status of the said car park the first applicant would have been informed by officers of the first respondent that there was no car park to be along Jalan Sri Dagang at all or that cars were parking there on temporary basis. There is no doubt that the first applicant was accorded the right to be heard by the first respondent otherwise he would not have been able to obtain those plans and other necessary information to enable him to make representations to the first to fourth respondents and to commence this JR.

[67] The applicants asserted that they have the legitimate expectation for the respondents to continue to maintain the said car park adjacent or servicing the applicants' property and or place of business at the MWCC. With respect there is no basis to do so. That so called car park was never intended to be a car park because according to the approved development

plan there was to be no car parks along what is known as Jalan Sri Dagang which was created from land surrendered to the State for a public road by the UHSB. The said car park that was there was only temporary. Further none of the applicants have any ownership or proprietary rights to any of the said car park. There was also nothing in the said sale and purchase agreement that say the UHSB is to provide the applicants with car parks or that there would be constructed the said car park along Jalan Sri Dagang. The applicants knew at the time when they signed the sale and purchase agreement the site plan attached thereto clearly showed there would be no car parks in the middle of Jalan Sri Dagang.

[68] The applicants have also not alleged or shown they have or would suffer any loss or damage arising from the removal of the said car park. No damage is claimed by the applicants in this JR though they were properly entitled to do so if they had actually suffered or will suffer damage by reason of O. 53 r. 5 of the Rules of Court 2012. It is trite that no remedy would be granted to a person against a public authority unless he can prove he has sustained particular and substantial damage beyond general inconvenience and injury to the public. I have read the case of *Chong Sin Onn v. Kuching Municipal Council* [1966] 1 LNS 37 which was referred to me. In both cases the plaintiff in *Chong Sin Onn* and the applicants in the instant case do not claim proprietary right to the street or the public road (where the said car park was) respectively. It was held in *Chong Sin Onn* that unless the plaintiff can show that he suffered particular or substantial damage beyond personal inconvenience or injury no remedy would be granted to him.

[69] There is no doubt that the court has the jurisdiction to exercise judicial review over administrative decisions or decisions of inferior tribunals (see s. 25(2) Courts of Judicature Act 1964 read with the Schedule thereto). But before appropriate relief can be granted, it must be established that there is an invasion or threatened invasion of a legal right of the applicants. With respect I see none here. It has not been shown that any of the constitutional rights of the applicants would be infringed should the said car park be removed. Obviously the applicants would not be able to show such alleged infringement because the applicants do not own nor have any proprietary rights over the said car park as evidence of the sale and purchase agreement.

[70] On the evidence adduced and as I have emphasised the planning policy of the State Government is that there should be no parking along busy public roads as such parking would impede traffic flow and endanger public safety. As submitted by Datuk JC Fong the court ought not to make a decision which overrides planning/public policy. He had referred to the court to the case of *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2008] 6 CLJ 473 (affirmed by the Federal Court [2010] 3 MLJ 145) wherein the passage of the judgment of Lord Hoffman in *Tesco Stores Ltd v. Secretary of State for Environment and Others* [1995] 1 WLR 759 at 780 F-

H was approved. Having read through those cases I would like to quote this passage in *Tesco Stores Ltd*, *supra*, "If there is one principle of the planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State."

Conclusion

[71] The applicants' application is therefore dismissed with costs.